

Passmann discloses that the evaluation at the vehicle receiving the alert message involves filtering based on the following criteria:

1. Road type;
2. Position;
3. Heading; and
4. A couple of other criteria.¹

Notably absent from the filtering criteria is any disclosure or requirement for the speed of the vehicle that sent the alert message.

The Response to Arguments section of the Office Action cites to page 151 and Figures 1-5 of Passmann as disclosing that the alert signal can be generated based on a variety of input information and that the “generated alert message *can* include the vehicle acceleration signal and GPS data.”² Passmann, however, does not expressly or inherently disclose that the alert message itself includes all of the information used for determining whether to generate the alert message, much less that it particularly includes vehicle speed.

Claim 13 is rejected for anticipation, which requires that “each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”³ Unlike obviousness, inherency “may not be established by probabilities or possibilities.”⁴ Instead, inherency requires that “the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would

¹ Passmann at page 151, second column - discussing the filtering criteria.

² Page 7. (Emphasis added).

³ M.P.E.P. § 2131, citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, (Fed. Cir. 1987).

⁴ M.P.E.P. § 2112 IV, citing *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

be so recognized by persons of ordinary skill.”⁵ Thus, what ***could*** be in the alert message of Passmann is not sufficient to support an anticipation rejection. Instead, the anticipation rejection can only be sustained based on what ***must*** be in the alert message in view of the disclosure of Passmann.

The Office Action correctly notes that in Passmann the determination of whether to generate the alert message is based on information from vehicle systems and sensors, including “warning flasher, acceleration, GPS-position, signals of airbag inflation or anti-blocking-system”.⁶ Passmann, however, then proceeds to describe that once a critical “condition is detected, an alert message is generated”⁷ without describing the contents of the alert message. As such, there is nothing in the “Signal Generation” section of Passmann expressly or inherently disclosing that vehicle speed is included in the alert message.

It is respectfully submitted that there is nothing in Passmann requiring that the alert message, which at best includes road type, position, heading and “a couple of other criteria”, includes the speed of the vehicle sending the alert message. Road type, position and heading are not vehicle speed. What is encompassed by the “couple of other criteria” of Passmann is not known. As such, there is no express disclosure of the receipt of vehicle speed. Additionally, there is nothing in the disclosure of Passmann requiring that the “a couple of other criteria” include vehicle speed of the other vehicle. Thus, there is no inherent disclosure in Passmann that the receiving vehicle receives the vehicle speed of the other vehicle.

⁵ *Id.*

⁶ Page 151, first column.

⁷ Page 151, first and second columns.

Figures 1-5 likewise do not support an express or inherent disclosure in Passmann of the receiving vehicle receiving the vehicle speed of the other vehicle. Figure 1 of Passmann (reproduced below) illustrates the basic idea of the system and Figures 2a and 2b of Passmann (reproduced below) illustrate the receipt of the alert and the response to the alert. There is nothing in these figures disclosing that a vehicle receives the speed of another vehicle.

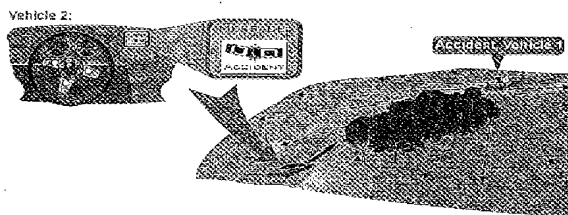


Figure 1. Basic system idea.

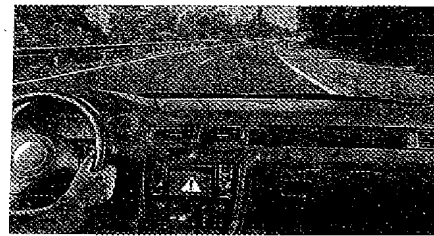


Figure 2a. Driver receives alert message. The reason is not visible from his current position due to the trees.

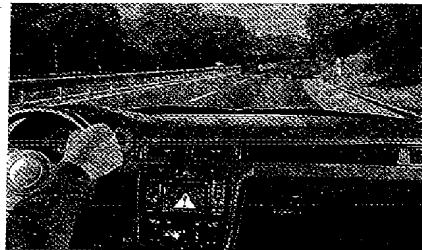


Figure 2b. The alerted driver reaches the position of the accident. Due to the early warning he can decelerate smoothly.

Figures 3 and 4 of Passmann illustrate that the central processing unit/DSP receives a variety of input signals. In view of the discussion in the “Signal Generation” section of Passmann it is clear that these input signals are used for determining whether to generate the alert message. There is nothing in Passmann indicating that all of these input signals, much less vehicle speed, are included in the alert message that is transmitted to the receiving vehicle.

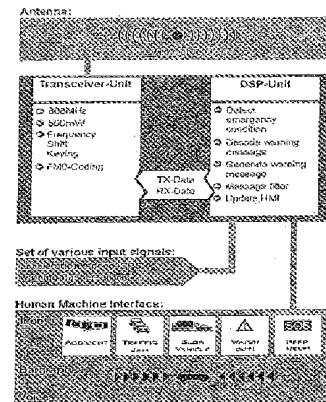
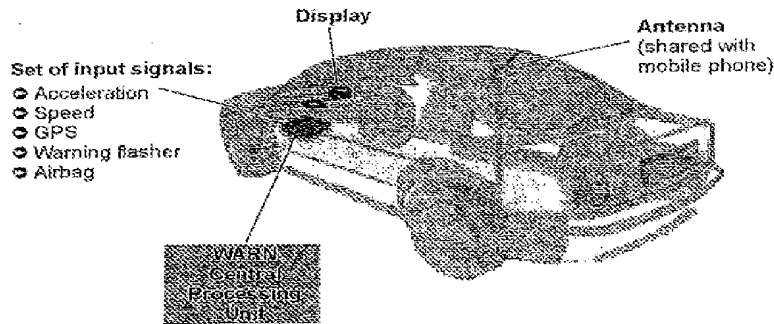
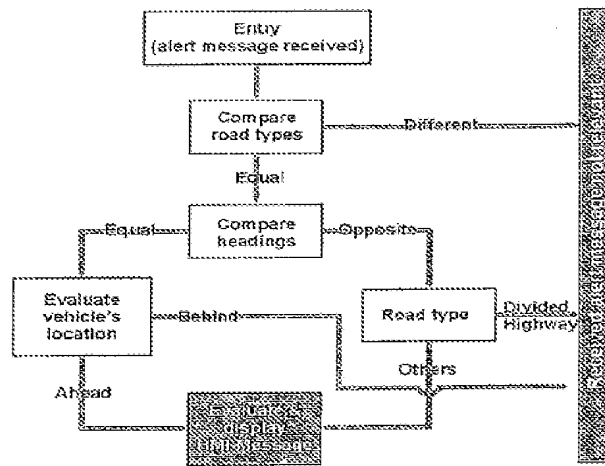


Figure 5 of Passmann (reproduced below) illustrates that the evaluation of the received alert message is based on road type, headings and vehicle location, but does not indicate that it involves the speed of the vehicle that transmitted the alert message.



Accordingly, there is no express or inherent disclosure in Passmann that the receiving vehicle receives the vehicle speed of the vehicle that transmitted the alert message. Thus, Passmann does not expressly or inherently disclose the first claim element identified above.

Regarding the second claim element identified above, i.e., the determination of the chronological profile, Passmann at best discloses responding

to isolated alert messages. Even if Passmann disclosed receiving multiple alert messages, which Passmann does not, this alone does not involve determining a chronological profile of the relevance measure. Instead, this would involve determining whether individual alert messages are relevant to the receiving vehicle.

Nevertheless, the Response to Arguments section states that page 151 and Figures 1-5 of Passmann discloses

a method for determining the relevance of ***the alert message received*** (creating a chronological profile of the relevance measure) by (1) comparing the input information with the current own driving situation, (2) checking if the road type the transmitting vehicle is using is the same as the type, and checking if the transmitter is ahead or behind the receiver.⁸

The “chronological profile of the relevance measure” of Applicants’ claim 14 “is determined by repeatedly determining the relevance measure”. Thus, comparing a single alert message against input parameters at a ***single point in time*** is not a repeated determination nor is it a chronological profile. The filtering of a single alert message against the input parameters at a single point in time is all that is disclosed on page 151 of Passmann. Figures 1-5 do not disclose a repeated determination of the relevance measure. Thus, Passmann does not expressly or inherently disclose the second claim element identified above.

Because Passmann does not expressly or inherently disclose at least the two claim elements identified above, Passmann does not anticipate claim 13. Independent claim 25 recites similar elements and is not anticipated by

⁸ Page 7. (Emphasis added).

Passmann for similar reasons. Claims 15-20, 22-25, 26 and 27 are patentably distinguishable over Passmann at least by virtue of their dependency.

Furthermore, Passmann does not expressly or inherently disclose that “incorrect warnings are detected based on the chronological profile of the relevance measure” as recited in claim 15. Again, Passmann at best discloses determining the relevance of an alert message at a *single point in time* and does not determine a chronological profile of the relevance measure. As such, Passmann cannot disclose detecting incorrect warnings based on a chronological profile of the relevance measure. Accordingly, claim 15 is patentably distinguishable over Passmann for this additional reason.

For at least those reasons set forth above it is respectfully requested that the rejection of claims 13, 15-20 and 22-27 for anticipation by Passmann be withdrawn.

Claims 14 and 21 are rejected for obviousness under 35 U.S.C. §103(a) in view of the combination of Passmann and International Patent Document WO 01/61668 A1, and its U.S. equivalent Published Patent Application No. 2003/0090392 to Schuessler (“Schuessler”). This ground of rejection is respectfully traversed.

Claims 14 and 21 depend from independent claim 13. As discussed above, Passmann does not disclose all of the elements of independent claim 13. It is respectfully submitted that Passmann does not suggest all of the elements of claim 13 and that Schuessler does not remedy the above-identified deficiencies of Passmann. As such, claims 14 and 21 are patentably distinguishable over the

combination of Passmann and Schuessler, and the rejection of these claims for obviousness should be withdrawn.

If there are any questions regarding this response or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323, Docket No. 095309.55979US.

Respectfully submitted,

November 3, 2010

/Stephen W. Palan, Reg. No. 43,420/
Stephen W. Palan
Registration No. 43,420

CROWELL & MORING LLP
Intellectual Property Group
P.O. Box 14300
Washington, DC 20044-4300
Telephone No.: (202) 624-2500
Facsimile No.: (202) 628-8844
SWP:crr
13684321